



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0128]

RIN 1625-AA00

Safety Zone; M/V XIANG YUN KOU and MODU NOBLE DISCOVERER;

Resurrection Bay, Seward, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters, from surface to seabed, around the Motor Vessel (M/V) XIANG YUN KOU and the Mobile Offshore Drilling Unit (MODU) NOBLE DISCOVERER with a planned transit through Resurrection Bay. The temporary safety zone will encompass the navigable waters within a 500 yard radius of the MODU NOBLE DISCOVERER from dock to loading in Resurrection Bay, Seward, Alaska, onto the transport ship M/V XIANG YUN KOU, and during the vessels intended route through Resurrection Bay. The purpose of the safety zone is to protect the persons and vessels from the inherent dangers of towing, loading, and transport operations of the MODU NOBLE DISCOVERER.

DATES: This rule is effective with actual notice from March 1, 2013 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until March 15, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0128 and are available online by going to <http://www.regulations.gov>, inserting USCG-2013-0128 in the "Keyword" box, and then clicking "Search." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Nathan Menefee, U.S. Coast Guard, Sector Anchorage, Assistant Chief, Inspections Division; telephone 907-271-6707, e-mail Nathan.S.Menefee@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard was given insufficient prior notice by the MODU operator that towing was necessary, and as such, it is impracticable to undertake notice and comment. Immediate action is needed to protect human life, property, and the environment from possible tampering, collisions, allisions, oil spills, and releases during this transit.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the

Federal Register because immediate action is needed to minimize potential danger to the public during the event.

B. Basis and Purpose

The Coast Guard proposes the establishment of a temporary safety zone around the M/V XIANG YUN KOU and MODU NOBLE DISCOVERER while towing, loading, and transporting in approximate position lat. 60°06'30" North and long. 149°24'00" West in Resurrection Bay, Alaska, and through Resurrection Bay, Alaska. The Coast Guard believes a safety zone is needed based on the significant number of persons, vessels, and activities involved to tow and load the MODU NOBLE DISCOVERER and has determined that it is highly likely that any tampering, collision, allision, or inability to identify, monitor or mitigate persons, vessels, and any additional hazards that might be encountered could result in a hazardous situation.

The loading of the MODU NOBLE DISCOVERER aboard the M/V XIANG YUN KOU is a complex operation involving multiple assist vessels maneuvering in close proximity to each other. The vessels involved in the loading and transportation operation must be able to safely move around the M/V XIANG YUN KOU and MODU NOBLE DISCOVERER during the operation without impediment.

C. Discussion of Rule

For the reasons stated above, the Coast Guard is establishing a safety zone in the navigable waters, from surface to seabed, within a 500 yard radius of the M/V XIANG YUN KOU and MODU NOBLE DISCOVERER while towing, loading, and transporting in and through Resurrection Bay, Alaska from March 1, 2013, through March 15, 2013. If transporting operations are completed, and the safety zone is determined to be no longer necessary, enforcement of the zone will end prior to March 15, 2013.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under those Order.

The proposed rule is not a significant regulatory action due to the minimal impact this will have on standard vessel operations within the vicinity of transit in the

waters of Resurrection Bay, Seward, Alaska. The proposed safety zone is designed to allow vessels transiting through the area to safely travel around the M/V XIANG YUN KOU and MODU NOBLE DISCOVERER during towing, loading and transporting operations without incurring additional cost or delay.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit through or anchor in the transit route in Resurrection Bay, Alaska from March 2, 2013, through March 15, 2013.

This safety zone will not have a significant economic

impact on a substantial number of small entities for the following reasons: this rule will be effective for a short period of time, and enforcement will end once the vessels have departed Resurrection Bay, Alaska.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) .

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure

by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with

Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, and an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 — REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to

read as follows:

Authority: 33 U.S.C 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, AND 160.5; Pub L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T17-0128 to read as follows:

§ 165.T17-0128 Safety Zone: Resurrection Bay, Seward, AK,

(a) Location. The following areas are safety zones: The established safety zone includes the navigable waters from surface to seabed within a 500 yard radius around the M/V XIANG YUN KOU and the MODU NOBLE DISCOVERER, in approximate position lat. 60°06'30" North and long. 149°24'00'" West in Resurrection Bay, Seward, Alaska with a planned transit through Resurrection Bay, Alaska.

(b) Effective date. The Safety Zone is effective beginning March 1, 2013, from 8 a.m. local time through March 15, 2013, 10 p.m. local time or until the vessels transit outside the United States territorial seas.

(c) Regulations. The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the areas described in paragraph (a). In addition to the general regulations, the following provisions apply to this safety zone:

(1) All persons and vessels shall comply with the

instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(2) Entry into the safety zone is prohibited unless authorized by the COTP or his designated on-scene representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(3) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(4) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force including notification that the MODU NOBLE DISCOVERER is loaded onto the M/V XIANG YUN KOU by providing notice in accordance with 33 CFR 165.7.

(d) Penalties. Persons and vessels violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

DATED: March 1, 2013

Paul Mehler III,
Captain, U.S. Coast Guard
Captain of the Port, Western Alaska

[FR Doc. 2013-05904 Filed 03/13/2013 at 8:45 am; Publication Date: 03/14/2013]